

Federal Communications Commission

DA 99-2485

Before the
Federal Communications Commission
Washington, D.C. 20554

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FCC MAIL SECTION

In the Matter of)	
)	
Request for Review)	
of the Decision of)	
the Universal Service Administrator by)	
)	
Great Western Network Schools)	
Washburn, North Dakota)	File Nos. SLD-40216, 22568, 15956
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Changes to the Board of Directors of the)	CC Docket No. 97-21 ✓
National Exchange Carrier Association, Inc.)	

ORDER

Adopted: November 9, 1999

Released: November 9, 1999

By the Common Carrier Bureau:

1. The Common Carrier Bureau has under consideration Letters of Appeal, filed June 10, 1999 and June 21, 1999, respectively, by Great Western Network Schools (Great Western) seeking review of two decisions issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC or Administrator). In its June 10, 1999 Letter of Appeal, Great Western seeks review of the SLD's decisions denying funding for telecommunications services under the schools and libraries universal service support mechanism.¹ In its June 21, 1999 Letter of Appeal, Great Western seeks review of the SLD's decision denying Great Western reimbursement for six months of funding pursuant to the Commission's decision in the *Fifth Reconsideration Order* to extend the funding period.² For

¹ Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

² See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fifth Order on Reconsideration and Fourth Report and Order, 13 FCC Rcd 14915 (1998) (*Fifth Reconsideration Order*).

the reasons set forth below, we deny the June 10, 1999 Letter of Appeal and affirm SLD's decision. We also deny the June 21, 1999 Letter of Appeal, as it applies to discounts for telecommunications services provided by Midcontinent Cable Co. of North Dakota (Midcontinent), and direct USAC to adjust the commitment of discount funding made in violation of a federal statute with respect to this service provider. Finally, we grant the June 21, 1999 Letter of Appeal, as it applies to discounts for telecommunications services provided by West River Telecommunications Cooperative (West River), to the extent provided below.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.³ In order to receive discounts on eligible services, schools must file certain information with the Administrator. Specifically, the Commission's rules require that an applicant submit to the Administrator a completed FCC Form 470, in which the applicant sets forth the school's technological needs and the services for which it seeks discounts.⁴ Once the school has signed a contract for eligible services, it must file an FCC Form 471 application to notify the Administrator of the services that have been ordered, the carrier with whom the school has signed the contract, and an estimate of funds needed to cover the discounts to be given for eligible services.⁵ This information is provided in Block 5 of FCC Form 471. The Administrator then determines the amount of discounts for which the school is eligible. Approval of the application is contingent upon the filing of FCC Form 471, and funding commitment decisions are based upon the information provided by the applicant on this form.

3. In its FCC Form 471 for application number 15956, dated March 1, 1998, Great Western indicated in Item 15 of Block 5 that it was seeking discounts for telecommunications services from Midcontinent (funding request numbers 16040 and 16043) and West River (funding request number 16046). The estimated *one time* pre-discount costs were listed as \$32,114.00, \$4,380.00, and \$17,976.00, respectively. No entries were listed in the column for "Estimated Monthly Pre-Discount Cost."

4. In its FCC Form 471 for application number 40216, dated April 1, 1998, Great Western indicated in Item 15 of Block 5 that it sought discounts for telecommunications services from Midcontinent (SLC Service Provider #143008627). In its FCC Form 471 for

³ 47 C.F.R. §§ 54.502, 54.503.

⁴ 47 C.F.R. § 54.504(b)(1), (b)(3). In submitting FCC Form 470, an applicant is required to provide only general information about the services for which it seeks discounts, *e.g.*, number of phones that require service, number of dial-up connections necessary, as well as an assessment of the applicant's existing technology that may be necessary for the effective use of eligible services.

⁵ 47 C.F.R. § 54.504(c).

application number 22568, dated April 1, 1998, Great Western also indicated in Item 15 of Block 5 that it sought discounts for telecommunications services from Midcontinent (SLC Service Provider #143008627).

5. By letter dated November 20, 1998, the SLD approved Great Western's request for discounts for services listed in its FCC Form 471 for application number 15956, based on its estimated total annual pre-discount costs. By letter dated December 30, 1998, and by letter dated January 26, 1999, the SLD denied Great Western's requests for discounts for application number 22568 and application number 40216, respectively. Great Western appealed these decisions to SLD. With respect to application number 15956, Great Western appealed the SLD's decision limiting the funding commitment to the 1998 funding year, noting that "the SLC fiscal year had been extended to end on June 30, 1999" and that the amount of discounts they received should have been "automatically adjusted to reflect the added months in the year."⁶

6. On May 4, 1999, the SLD affirmed its initial funding decision and denied Great Western's appeal with respect to application number 40216. In the Administrator's Decision on Appeal, the SLD explained that the funding request was denied because the request for the lease of fiber optic line includes telecommunications services, and that program rules mandate that the provider of these services be a telecommunications provider. SLD further determined that the provider at issue, Midcontinent, is not an eligible telecommunications provider. Similarly, on May 3, 1999, the SLD denied Great Western's appeal with respect to application number 22568. In the Administrator's Decision on Appeal, the SLD explained that the funding request was denied for the funding request numbers (FRNs) at issue in this application "since these FRNs include requests for Telecommunications Service (Leased WAN) from a provider [Midcontinent] which is not an eligible telecommunications common carrier service provider"

7. On May 25, 1999, the SLD affirmed its initial funding decision and denied Great Western's appeal for application number 15956.⁷ Specifically, the Administrator's Decision on Appeal explained that the "[s]ervices listed as one time charges by the applicant are only eligible for funding within the year." Additional funding requests beyond those included on the original FCC Form 471 can only be considered if included on a new FCC Form 471. Unfortunately, those requests submitted after the close of the filing window on April 15, 1998 cannot be funded."⁸

⁶ Letter from Bill Strasser to Schools and Libraries Corporation, dated November 30, 1998.

⁷ Administrator's Decision on Appeal, dated May 25, 1999.

⁸ Administrator's Decision on Appeal at 1.

8. We have reviewed Great Western's applications as well as SLD's records relating to these applications, and we conclude that SLD properly determined that Great Western was not entitled to discounts for the FRNs at issue in application numbers 40216 and 22568. The issue raised in these applications is whether Midcontinent is a telecommunications carrier. As discussed in the *Universal Service Order*, as well as reiterated in the *Fourth Reconsideration Order*, the Communications Act permits only "telecommunications carriers" to receive direct reimbursement under the universal service support mechanism for the provision of discounted telecommunications services.⁹ The record indicates that Midcontinent does not qualify as a "telecommunications carrier." Indeed, Great Western does not argue that Midcontinent qualifies as a telecommunications carrier. Rather, it suggests that it should have classified the services for which it sought discounts on its FCC Form 471 as Internet access rather than telecommunications services, ostensibly because, unlike telecommunications services, Internet access services can be provided by those other than solely telecommunications carriers. Nonetheless, given the clear proscription of the *Universal Service Order* on funding for telecommunications services provided by entities other than common carriers, it was Great Western's responsibility to correctly identify the services for which funding was being sought. In light of these findings, we conclude that SLD correctly denied Great Western funding for the applications at issue in this case.

9. We also affirm the decision of SLD denying the six month extension period with respect to discounts for services provided by Midcontinent in application number 15956. In light of the decision above, it is clear that Great Western is ineligible not only for the six month extension it sought in its appeal, but indeed, for the discounts for telecommunications services it may have already received. As discussed above, Midcontinent does not qualify as a "telecommunications carrier" and thus Great Western should not have received funding for telecommunications services provided by Midcontinent pursuant to this application. We direct USAC to adjust funding commitments made to Great Western in connection with services provided by Midcontinent for application number 15956 because the funding of this application violates the Communications Act.¹⁰

⁹ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9177-78, 9005-23, 9084-90 (1997) (*Universal Service Order*); *Federal-State Joint Board on Universal Service, Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, Fourth Order on Reconsideration, 13 FCC Rcd 5318, 5413-14 (1997) (*Fourth Reconsideration Order*).

¹⁰ See *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 97-21, 96-45, FCC 99-291, Order (rel. October 8, 1999) (directing USAC to adjust commitments of discount funding made to schools and libraries that filed applications for discount funding, the disbursement of which would violate a federal statute).

10. Application number 15956 also included an FRN for discounts sought for telecommunications services provided by West River Telecommunications Cooperative. Because West River is a telecommunications carrier, we consider Great Western's appeal with respect to this part of application number 15956. Examination of Great Western's FCC Form 471, Block 5, Item 15, reveals that Great Western calculated a one-time pre-discount cost instead of an estimated monthly pre-discount cost for the FRN corresponding to services provided by West River. Although this may have been an error on Great Western's part, at the time that Great Western submitted its FCC Form 471, it was not an error that would have resulted in any adverse consequence. Calculating an estimated monthly pre-discount cost as opposed to a one-time pre-discount cost in the FCC Form 471 only became imperative with the adoption, on June 22, 1998, of the *Fifth Reconsideration Order*. In that order, the Commission provided for an additional six months of funding for a total funding period of 18 months, consistent with its adoption of a fiscal year cycle.¹¹ Under that decision, applications seeking discounts on telecommunications services and Internet access submitted during the initial 75-day filing window (opening on January 30, 1998 and closing on April 15, 1998) would be provided support for the eighteen-month period of January 1, 1998 through June 30, 1999. These services would be funded "at the approved *monthly* level, consistent with the information included on the school's or library's application through June 30, 1999."¹² Because Great Western did not provide an estimated monthly cost for the services provided by West River for which it sought discounts, SLD denied it an additional six months of funding. Great Western could not have been aware of the significance of failing to submit an estimate of monthly pre-discount costs at the time that it filed its FCC Form 471 on April 1, 1998. That is, Great Western could not have been aware at this time that failing to break its costs down into monthly installments would result in the denial of the six month funding extension. It was only with the release of the *Fifth Order on Reconsideration* several months later that this precise classification of costs became significant.¹³ Under these circumstances, Great Western is entitled to funding for services provided by West River during the six-month extension period. Therefore, we will remand Great Western's application number 15956 to the SLD for reprocessing of its application and issuance of a new funding commitment decision letter. Great Western should submit to SLD the appropriate monthly costs for services information required by FCC Form 471 in order for SLD to complete its reprocessing of the application.

¹¹ *Fifth Order on Reconsideration*, 13 FCC Rcd at 14916 and 14920, paras. 1 and 8.

¹² *Id.* at 14922, para. 12 (emphasis added).

¹³ See, e.g., *Request for Review of the Decision of the Universal Service Administrator by Williamsburg-James City Public Schools*, CC Docket Nos. 96-45, 97-21, Order, FCC 99-298 (rel. October 15, 1999).

11. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the appeal filed by Great Western Network Schools on June 10, 1999 IS DENIED, and the appeal filed by Great Western Network Schools on June 21, 1999 IS DENIED to the extent provided herein and GRANTED to the extent provided herein, and that Great Western's application IS REMANDED to SLD for further consideration in light of this decision.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, appearing to read "Yog R. Varma", with a long horizontal flourish extending to the right.

Yog R. Varma
Deputy Chief, Common Carrier Bureau